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Memorandum Decision shall not be
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**IN THE
COURT OF APPEALS OF INDIANA**

JUSTIN D. DOSS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 02A03-0610-CR-497

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-0610- FB-18

February 26, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Justin D. Doss appeals from the twelve-year sentence imposed by the trial court following his guilty plea to Robbery,¹ felony. Specifically, Doss argues that his sentence is inappropriate in light of the nature of the offense and his character. Finding that the sentence imposed by the trial court was not inappropriate in light of the nature of the offense and Doss's character, we affirm the judgment of the trial court.

FACTS

On January 22, 2006, eighteen-year-old Doss, while armed with a knife, walked into a gas station in Allen County and demanded money. Doss held the knife up to the cashier's neck and removed money from the cash drawer. Thereafter, the State charged Doss with class B felony robbery.

On May 26, 2006, Doss entered into a plea agreement and pleaded guilty as charged to the class B felony robbery. The plea agreement provided that sentencing would be open to the trial court's discretion but that the executed portion of the sentence would be capped at twelve years.

On June 26, 2006, the trial court held a sentencing hearing. The trial court found Doss's history of juvenile adjudications—which included adjudications for battery, resisting law enforcement, criminal conversion, reckless possession of paraphernalia, disorderly conduct, and minor in possession of alcohol—and Doss's failed efforts at rehabilitation to be aggravating circumstances. The trial court found Doss's guilty plea, acceptance of responsibility, and remorse to be mitigating circumstances. The trial court found that the

¹ Ind. Code § 35-42-5-1.

aggravators outweighed the mitigators and sentenced Doss to a twelve-year executed sentence for his class B felony conviction. Doss now appeals.

DISCUSSION AND DECISION

I. Amended Sentencing Statutes

Doss argues that the twelve-year executed sentence is inappropriate in light of the nature of the offense and his character. Before addressing the merits of Doss's argument, we observe that on April 25, 2005, the General Assembly amended Indiana's felony sentencing statutes, which now provide that the person convicted is to be sentenced to a term within a range of years, with an "advisory sentence" somewhere between the minimum and maximum terms. See Ind. Code §§ 35-50-2-3 to -7. As it calculates the sentence to impose on a defendant, the trial court "may consider" certain enumerated aggravating and mitigating circumstances in addition to other matters not listed in the statute. I.C. §§ 35-38-1-7.1(a) to -7.1(c). Furthermore, the legislature provided that a trial court "may impose any sentence that is . . . authorized by statute . . . regardless of the presence or absence of aggravating circumstances or mitigating circumstances." I.C. § 35-38-1-7.1(d) (emphasis added).

Here, the commission of Doss's crime and his sentencing occurred after the April 2005 amendment of the sentencing statutes; thus, we will apply the amended sentencing statutes. In examining the amended sentencing statutes, we conclude that if a trial court chooses to impose a sentence greater than the advisory term, it is not required to make findings as to the existence of mitigating or aggravating factors. See id. If it does identify

aggravators and/or mitigators, however, the trial court must simply state its reasons on the record for choosing the particular sentence that departs from the advisory term. I.C. § 35-38-1-3(3).

Moreover, under the amended sentencing scheme, a defendant may no longer claim that a trial court abused its discretion under statutory guidelines in imposing the sentence. Because we can no longer reverse a sentence because a trial court improperly found and/or weighed aggravating and mitigating circumstances, our review is now confined to an analysis under Indiana Appellate Rule 7(B): “The Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” We also observe, however, that we are entitled to consider, among other things, aggravating and mitigating factors found—or not found—by the trial court as we conduct a Rule 7(B) review. See, e.g., Prowell v. State, 787 N.E.2d 997, 1005 (Ind. Ct. App. 2003) (considering statutory aggravators and mitigators as part of an analysis of the character of the offender); Martin v. State, 784 N.E.2d 997, 1013 (Ind. Ct. App. 2003) (same).

II. Doss’s Sentence

Doss argues that the sentence imposed by the trial court for his offense is inappropriate in light of the nature of the offense and his character. In particular, he contends that because the State agreed to a twelve-year cap on any executed sentence in his plea agreement, that twelve years became the new maximum sentence to which he could be sentenced for his class B felony conviction and, therefore, a twelve-year sentence would be

inappropriate because the trial court's finding of mitigating factors would have precluded the trial court from imposing the maximum sentence under the plea agreement.

Indiana Appellate Rule 7(B) provides, "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." However, sentence review under Appellate Rule 7(B) is very deferential to the trial court's decision, Martin, 784 N.E.2d at 1013, and we refrain from merely substituting our judgment for that of the trial court. Foster v. State, 795 N.E.2d 1078, 1092 (Ind. Ct. App. 2003). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

We first note that twenty years—not twelve—is the maximum sentence to which a defendant can be sentenced for a class B felony. Specifically, Indiana Code section 35-50-2-5 provides, in part, that "[a] person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years." Thus, the State's agreement to a cap of twelve years on any executed sentence did not replace the statutory maximum sentence for a class B felony.

As to the nature of the offense, the factual basis provided during the guilty plea hearing indicates that Doss, while armed with a knife, went to a gas station, held the knife to the cashier's neck, and stole money from the cash drawer.

As to Doss's character, the record reveals that Doss, who was eighteen years old at the time of the robbery, had a lengthy history of juvenile adjudications and had been given

numerous attempts at probation and electronic monitoring. Appellant's App. p. 48. Additionally, the record reveals that Doss was released on bond on this robbery charge but later had his bond revoked after he was arrested and charged with another class B felony robbery and class C misdemeanor never receiving a license. Id. at 3, 4, 30, 48. Finally, the presentence investigation report reveals that Doss admitted to drinking alcohol daily since he was seventeen years old and smoking marijuana twice a week since he was fourteen years old. Id. at 50. In essence, Doss's character reveals a continuous and long-standing disregard for the law.

Based on the nature of the offense and Doss's character, we conclude that the trial court's imposition of a twelve-year sentence for the commission of class B felony robbery is not inappropriate.

The judgment of the trial court is affirmed.

ROBB, J., concurs.

DARDEN, J., concurs in result.